IN THE HIGH COURT OF UTTRANCHAL
AT NAINITAL
A.O. No. 229/2001
(Old F.A.F.O. No. 133/1998)

M/s Himalayan Footwear Industries
Private Ltd. Panda, Post, Thana,
Tehsil and District Pithoragarh through
Director/Board of Director Narain Singh
Bhaisora, Niwasi G.I.C. Road,
Pithoragarh ...Defendant/ Appellant.

Versus

Mohd. Islam S/o Bhagel
R/o Village Pipra Madan Gopal,
District Deoria (U.P.) Hal Gram
Washte Post and District
Pithoragarh ... Respondent.

Sri S.S. Adhikari, learned counsel for the appellant
Sri Neeraj Upreti, Advocate for the respondent.

Hon'ble B.C. Kandpal, J.:

This appeal, under Section 30 Workmen Compensation Act, 1923, has been preferred, against the award dated 9-1-98, passed by the Workmen Compensation Commissioner, Pithoragarh in W.C.A. case No. 20/1993, Mohd. Islam Vs. M/s Himalaya Footwear Industries Pvt. Ltd, whereby the claimant/respondent was awarded Rs. 53,820-99P. towards compensation along with interest @ 6% per annum from the date of accident.

2- The relevant facts of the case, in short, are that the claimant/respondent Mohd. Islam was engaged as workman in Himalaya Footwear Industries Private Ltd. On 27-10-92 at about 4 P.M., while he was operating the Rolla Machine, his left hand was crushed badly in the machine and he became permanently disabled. At the time of accident he was 27 years of age and was earning Rs. 1200/- per month. The claimant also alleged that he spent Rs. 10000/- on his treatment.

3- The O.P. M/S Himalayan Footwear Pvt. Ltd. Filed its W.S. and alleged that the injury to the claimant was not caused while working in the Rolla Machine. He was also given Rs. 1000/- as monetary help. The injury to the claimant was caused by not following the safety measures framed in this regard.

4- On the pleadings of the parties, the Workmen Compensation Commissioner framed the following issues:-

1. Whether the claimant Mohd. Islam sustained injury on 27-10-92, during the course of employment in Himalayan Footwear Industries Pvt. Ltd. and he became permanently disabled?.
2. Whether claimant Mohd. Islam was employed as workman in M/s Himalayan Footwear Company at monthly emolument of Rs. 1200/-?.
3. How-much disability was caused to Mohd. Islam in the accident?.
4. Relief to which the claimant is entitled to get and from whom?

5- Parties adduced documentary as well as oral evidence in support of their cases. The Workmen Compensation Commissioner, after hearing learned counsel for the parties and perusing the evidence on record, allowed the claim petition and awarded Rs. 53,820-99 P. along with interest @ 6% per annum from the date of the accident till the date of actual payment, against the O.P./appellant.

6- Feeling aggrieved, the employer/appellant has filed the appeal before the Allahabad High Court, which has been transferred to this court, after creation on new State.

7- Heard learned counsel for the parties and perused the record.

8- The learned counsel for the appellant has argued that the claimant/respondent, who was working as Press Man, was not authorized to operate the Rolla Machine and at the time of accident he was operating the same at his own sweet will without there being any order or direction of the employer in this regard and as such the appellant/O.P. cannot be held liable to pay any compensation. It was also argued that the court below has erred in law in holding the disability up-to 50%.

9- On the other hand learned counsel for the claimant/respondent has refuted the submissions raised by the learned counsel for the appellant and submitted that claimant at the time of accident was assigned the work at the Rolla Machine and his left hand was crushed in the machine during the course of his employment, therefore, he was rightly awarded compensation. It was also submitted that the disability occurred to the claimant was up-to 50% and the learned Commissioner has rightly assessed the compensation.

10- On a careful scrutiny of the material on record, I am of the view that the submissions advanced by the learned counsel for the appellant have no substance. The learned Commissioner has rightly held that the claimant/respondent sustained injury during the course of his employment and assessed the disability up-to the extent of 50%

11- The claimant Mohd. Islam examined himself as P.W.1 before the Workmen Compensation Commissioner and deposed that at the time of accident he was

operating the Rolla Machine and suddenly his left hand was involved in the machine and was badly crushed. He was admitted in District Hospital, Pithoragarh for treatment. He was also examined by Medical Board and was issued permanent disability certificate upto to an extent of 50 %. He also deposed that he was getting salary of Rs. 1200/- per month. This witness has not been cross examined on the point that he was not authorized to operate the Rolla Machine. This witness has denied the suggestion that the accident was occurred due to his own negligence. This witness also deposed that he was working on the machine on the instructions of the employer. Although the O.P./appellant has filed photo copy of attendance register allegedly maintained in the Factory, but perusal of this document shows that no initials have been made by the workmen in it and only 'P' or 'A' has been noted by some other person against workmen. These entries have not been verified by Supervisor of the Factory. Further about 8 – 9 workmen are shown engaged in the Factory and it is very likely that these workmen are allotted the work in accordance with the requirement. It may be true that the claimant at the time of accident was instructed to work on the Rolla Machine, otherwise he should not have been allowed to operate the same on his own accord. The finding recorded by the learned Commissioner in this regard has no infirmity and I am in full agreement with it.

12- So far as the quantum of permanent disability is concerned, P.W.2 Dr. K.S. Mehta has deposed that the claimant Mohd. Islam remained admitted in the Hospital from 27-10-92 to 5-3-93. This witness also deposed that on 16-3-93 Medical Board was held in the matter of disability of Mohd. Islam and thereafter he and two other Doctors issued the permanent disability certificate. This

witness further deposed that the permanent disability of Mohd. Islam was assessed at 50%. Therefore, I am of the view that the learned Commissioner was justified in holding that the claimant suffered 50% permanent disability. The claimant at the time of accident was getting Rs. 1200/- per month as his salary and the learned Commissioner has assessed Rs. 1000/- per month for calculating the compensation, which in my opinion is well supported by the documentary evidence. I, do not find any infirmity and illegality in the impugned award.

13- The interest has been awarded to the claimant @ 6% per annum from the date of accident, which also do not require any interference.

14- In view of aforesaid, I hold that the appeal being devoid of merit is liable to be dismissed.

15- Accordingly the appeal is dismissed. The impugned judgment and award dated 9-1-1998 passed by the Workmen Compensation Commissioner, is hereby confirmed.

(B.C. Kandpal, J.)

Dated: November 03, 2006
Aswal.